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APPENDIX A

**United States Court of Appeals
For the Fourth Circuit**

No. 18-7030

[Filed May 27, 2021]

Christopher N. Payne,)
)
<i>Plaintiff - Appellant,</i>)
)
v.)
)
Jahal Taslimi, Medical Doctor)
at Armor Health Serv.; Ms. Smith,)
LPN, HAS Armor Health Serv.,)
)
<i>Defendant - Appellee.</i>)

Appeal from United States District Court
for the Eastern District of Virginia - Alexandria

Submitted: September 9, 2020
Filed: May 27, 2021

Before THACKER, RICHARDSON, and
QUATTLEBAUM, Circuit Judges.

RICHARDSON, Circuit Judge:

While incarcerated in a prison medical unit, Christopher Payne’s doctor came to his bedside and reminded Payne, within the earshot of others, that he had not taken his human immunodeficiency virus (“HIV”) medication. Payne asserts that the doctor’s conduct violated his Fourteenth Amendment right to privacy and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. 104-191, 110 Stat. 1936 (codified at 29 U.S.C. § 1181 *et seq.*).

We first reject Payne’s claim that the doctor’s statement violated the Fourteenth Amendment because he lacks a reasonable expectation of privacy in this information while incarcerated in a prison medical center. We also reject Payne’s HIPAA claim because HIPAA does not create a private right of action that Payne may avail himself of. So we affirm the dismissal of his complaint.

I. Background

In 2018, Payne was incarcerated at Deep Meadow Correctional Center in State Farm, Virginia. Dr. Jahal Taslimi approached Payne’s bed in the medical unit and told Payne that he had “not take[n] [his] HIV medications” that day. J.A. 16. According to Payne, the medical unit is an “open dorm,” so other staff, offenders, and civilians were close enough to overhear Dr. Taslimi’s statement. J.A. 6. Payne alleges that some of those nearby “stopped talking and looked” at him. *Id.* Dr. Taslimi evidently apologized, but Payne alleges that the damage was done: other prison staff and inmates had learned that Payne was on HIV

medication. Payne filed an array of grievances, which failed to provide relief.

Payne then turned to federal court, filing a pro se action against Dr. Taslimi. *See* 42 U.S.C. § 1983.¹ The district court dismissed Payne’s complaint under 28 U.S.C. § 1915A(b) for failure to state a claim. Payne timely appealed, and we have jurisdiction. *See* 28 U.S.C. § 1291. Exercising that jurisdiction, we review de novo the district court’s dismissal. *Jehovah v. Clarke*, 798 F.3d 169, 176 (4th Cir. 2015).

II. Fourteenth Amendment Due Process Claim

A. *Stare decisis and precedent*

We do not address Payne’s Fourteenth Amendment privacy claim on a blank slate. Instead, we write on the ever-present background of *stare decisis*.

At the Supreme Court, *stare decisis* “is a principle of policy” and neither “a mechanical formula of adherence” nor an “inexorable command.” *Payne v. Tennessee*, 501 U.S. 808, 828 (1991) (quoting *Helvering v. Hallock*, 309 U.S. 106, 119 (1940)). The Supreme Court balances various factors, including

¹ Along with his Fourteenth Amendment and HIPAA claims, Payne raised various other claims that lack merit. Payne sued Ms. Smith, the nurse who took Payne’s complaint. But Payne alleged no facts about how Ms. Smith “acted personally in the deprivation of [his]’ rights,” so those claims are not cognizable under § 1983. *Wilcox v. Brown*, 877 F.3d 161, 170 (4th Cir. 2017) (quoting *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977)). Nor do Payne’s allegations that Dr. Taslimi failed to abide by the procedures of the Virginia Department of Corrections give rise to a claim under § 1983. *See Wright v. Collins*, 766 F.2d 841, 849 (4th Cir. 1985).

the quality of the precedent's reasoning, the workability of the established rule, the reliance interests it has engendered, its consistency with related decisions, and the developments since its prior decision. See *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478–79 (2018). For the Supreme Court, the decision of whether to follow precedent is a difficult one, but they have “never felt constrained to” do so. *Payne*, 501 U.S. at 827 (quoting *Smith v. Allwright*, 321 U.S. 649, 665 (1944)).

But as an inferior court, the Supreme Court's precedents do constrain us. See *Agostini v. Felton*, 521 U.S. 203, 237 (1997). In looking up to the Supreme Court, we may not weigh the same factors used by the Supreme Court to evaluate its own precedents in deciding whether to follow their guidance. We must simply apply their commands. So even were we to correctly conclude that a Supreme Court precedent contains many “infirmities” and rests on “wobbly, moth-eaten foundations,” it remains the Supreme Court's “prerogative alone to overrule one of its precedents.” *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (quoting *Khan v. State Oil Co.*, 93 F.3d 1358, 1363 (7th Cir. 1996) (Posner, J.)). It is beyond our power to disregard a Supreme Court decision, even if we are sure the Supreme Court is soon to overrule it.

Similarly, when a panel of our Court looks horizontally to our own precedents, we must apply their commands as a mechanical mandate. For even though a Fourth Circuit panel possesses the statutory and constitutional power to overrule another panel, we do not do so “as a matter of prudence.” *McMellon v. United States*, 387 F.3d 329, 334 (4th Cir. 2004) (en

banc). And that prudential judgment is categorical, so a panel of judges “cannot overrule a decision issued by another panel.” *Id.* at 332–34 (emphasis added); *see also id.* at 333 (noting that where two panels conflict, we must “follow the earlier of the conflicting opinions”). Only by granting en banc review may we apply stare decisis balancing to overrule precedent set by a prior panel (or a prior en banc court). *See id.* at 334; *see also id.* at 333 (noting that most other circuits follow the same practice). Thus, unlike the discretionary application of stare decisis by the Supreme Court, we are bound by prior panel decisions.²

That is not to say that everything said in a panel opinion binds future panels.³ We recognize that where we “assum[e] without deciding the validity of antecedent propositions” those assumptions “are not binding in future cases that directly raise the questions.” *United States v. Norman*, 935 F.3d 232, 241 (4th Cir. 2019) (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 272 (1990)); *see also Webster*

² To state the obvious, this means we must follow a prior panel decision even if it had abysmal reasoning, put forward unworkable commands, engendered no reliance interests, lacked consistency with other decisions, and has been undermined by later developments. Indeed, for this principle to mean anything, we must do so in exactly those cases.

³ Determining the scope of this horizontal precedent often presents its own perplexing problems. *See* Charles W. Tyler, *The Adjudicative Model of Precedent*, 87 U. CHI. L. REV. 1551 (2020) (discussing different models for determining the scope of prior intra-circuit decisions). And similar problems exist when we look vertically to the Supreme Court’s precedents. *See* Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 GEO. L.J. 921 (2016) (discussing how lower courts treat Supreme Court precedent).

v. Fall, 266 U.S. 507, 511 (1925). And we also recognize that dictum is not binding. See *Pittston Co. v. United States*, 199 F.3d 694, 703 (4th Cir. 1999). Dictum is a “statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding—that, being peripheral, may not have received the full and careful consideration of the court that uttered it.” *Id.* (quoting *United States v. Crawley*, 837 F.2d 291, 292 (7th Cir. 1988) (Posner, J.)); see also *Cohens v. State of Virginia*, 19 U.S. 264, 399–400 (1821). If necessary to the outcome, a precedent’s reasoning must be followed; otherwise, we are not so bound.⁴

B. Constitutional right to privacy

Shepherded by these principles, we turn to Payne’s claimed constitutional right to privacy. The Supreme Court’s guidance is less than illuminating. In its most recent decision on the matter, the Court “*assume[d], without deciding*, that the Constitution protects a[n informational] privacy right of the sort mentioned in *Whalen [v. Roe]*, 429 U.S. 589 (1977) and *Nixon [v. Administrator of General Services]*, 433 U.S. 425 (1977).” *NASA v. Nelson*, 562 U.S. 134, 138 (2011) (emphasis added). The Court also recognized that this was its “*approach in Whalen*”: assume a constitutional

⁴ Of course, our own prudential decision to follow prior panel decisions (horizontal stare decisis) is overcome by our mandate as an inferior court to follow the Supreme Court’s commands (vertical stare decisis). Thus, we are not bound by previous panels where “the prior opinion has been overruled by an intervening opinion from . . . the Supreme Court.” *McMellon*, 387 F.3d at 333. So where subsequent Supreme Court decisions “clearly undermine[]” a panel precedent, we need not follow that panel precedent. *United States v. Williams*, 155 F.3d 418, 421 (4th Cir. 1998).

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right to privacy exists but find that any existing right was not violated. *Id.* at 147.⁵

Although this Court's guidance has not been the model of clarity, we have gone beyond assuming. In *Walls v. City of Petersburg*, Walls claimed that the information required by an employment questionnaire violated her right to privacy. 895 F.2d 188, 189–90 (4th Cir. 1990). We first agreed that “[t]he constitutional right to privacy extends to . . . ‘the individual interest in avoiding disclosure of personal matters.’” *Id.* at 192 (citing *Whalen*, 429 U.S. at 599–600). But that “right to privacy” protected “only information with respect to which the individual has a reasonable expectation of privacy.” *Id.* at 193; see also *id.* at 192 (“Personal, private information in which an individual has a reasonable expectation of

⁵ *Nixon* charted a similar course. There, the Court acknowledged that “public officials . . . are not wholly without constitutionally protected privacy rights.” *Nixon*, 433 U.S. at 457. It went on to “assume . . . for the purposes of [that] case” that the withholding personal or financial information from presidential libraries and congressional acquiescence to that practice “g[ave] rise to [President Nixon’s] legitimate expectation of privacy in such materials.” *Id.* at 457–58 (citing *Katz v. United States*, 389 U.S. 347, 351–53 (1967)).

Some of our own cases have followed the same path. See *Watson v. Lowcountry Red Cross*, 974 F.2d 482, 487–88 (4th Cir. 1992) (assuming that a blood donor has a right to confidentiality in his identity but rejecting the argument that a mere possibility of public disclosure of private information could violate that right); *Taylor v. Best*, 746 F.2d 220, 225 (4th Cir. 1984) (assuming that an inmate has a right to privacy in their family background, but finding that “the compelling public interests in assuring the security of prisons and in effective rehabilitation clearly outweigh[ed]” the inmates interest in keeping that information confidential).

confidentiality is protected by one’s constitutional right to privacy.”).

Walls, we held, lacked a “reasonable expectation of privacy” in information that was “freely available in public records,” including marriages, divorces, children, and arrests or convictions of family members. *Id.* at 193–94. We suggested that she maintained a reasonable expectation of privacy in details that were “not part of the public record concerning a divorce, separation, annulment, or the birth of children.” *Id.* at 193. But those non-public details were not implicated in the case because they were not covered by the questionnaire. *Id.* at 193–94.⁶

Turning to the “[f]inancial information [] requested in the questionnaire,” we held that it was “protected by a right to privacy.” *Id.* at 194. As Walls possessed a right to privacy in the financial information, we weighed her privacy interest against the government’s interest in disclosure to guard against potential corruption. We found that the government’s interest was compelling and determined that it outweighed her right to privacy. We thus concluded that the required disclosure of financial information did not violate her right to privacy.

⁶ We also found information about same-sex sexual relations unprotected because, at that time, “[t]he Court [had] explicitly rejected ‘the proposition that any kind of private sexual conduct between consenting adults is constitutionally insulated from state proscription.’” *Walls*, 895 F.2d at 193 (quoting *Bowers v. Hardwick*, 478 U.S. 186, 191 (1986)). *Bowers* has since been overturned by the Supreme Court. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003). So to add some dictum to an opinion about dicta, this part of *Walls* is no longer good law.

Walls thus adopted a two-part inquiry, asking first whether “the information sought is entitled to privacy protection,” like the financial information from that case. *Id.* at 192, 194. And, if a right to privacy existed, then asking whether “a compelling governmental interest in disclosure outweighs the individual’s privacy interest.” *Id.* at 192. For the first inquiry, we explained that information is protected only where there is a “reasonable expectation of privacy” in it. *Id.* at 193. It is this inquiry that binds us today.

This “reasonable expectation of privacy” language emanates from Justice Harlan’s famous concurrence in *Katz v. United States*, 389 U.S. 347 (1967). There, Justice Harlan explained that the Fourth Amendment protects people where they have a “reasonable expectation of privacy,” that is, a place where the person has “an actual (subjective) expectation of privacy” and “the expectation [is] one that society is prepared to recognize as ‘reasonable.’” *Id.* at 360–61 (Harlan, J., concurring).⁷

Since *Walls*, we have applied this “reasonable expectation of privacy” test to evaluate whether information is protected by a constitutional right to privacy. In *Condon v. Reno*, we found that drivers lacked any constitutionally protected right to privacy

⁷ We were not the first court to consider the Fourth Amendment in this area. The Supreme Court, in assuming that a right to privacy existed in *Nixon*, cited *Katz*. See *Nixon*, 433 U.S. at 458. And in determining whether the government had a sufficient interest in invading that right, the Court cited *Terry v. Ohio*, 392 U.S. 1 (1968), a seminal Fourth Amendment case, along with other Fourth Amendment cases. *Nixon*, 433 U.S. at 458–63. See also *Walls*, 895 F.2d at 192 (relying on Justice Brandeis’s dissent in *Olmstead v. United States*, 277 U.S. 438 (1928), another seminal Fourth Amendment opinion).

in their personal information stored in motor-vehicle records. 155 F.3d 453, 465 (4th Cir. 1998), *rev'd on other grounds*, *Reno v. Condon*, 528 U.S. 141, 148 (2000) (upholding the Driver's Privacy Protection Act of 1994 under Congress's Commerce Clause power). We reasoned that driver's records were "the very sort of information to which individuals do not have a *reasonable expectation of privacy*." *Id.* at 464–65 (emphasis added). The existence of "pervasive schemes of regulation" . . . must 'necessarily lead to reduced expectations of privacy.'" *Id.* at 465 (quoting *California v. Carney*, 471 U.S. 386, 392 (1985), a Fourth Amendment case). And these motor-vehicle records are traditionally public and easily accessible. *Id.* As drivers lacked a "reasonable expectation of privacy," we held they lacked a constitutionally protected right to privacy that Congress could enforce under Section 5 of the Fourteenth Amendment. *Id.*

While *Condon* looked to the reasonable expectation of privacy to reject the claimed right to privacy, it also "note[d]" that "the Supreme Court has limited the 'right to privacy' to matters of reproduction, contraception, abortion, and marriage." *Id.* at 464 (internal citations omitted). This descriptive statement was unnecessary to *Condon*'s holding, which turned on the lack of a reasonable expectation of privacy based on the pervasive regulation and public nature of the information. *See id.* at 464–65. It is thus dictum that does not control our analysis.

Even so, we later appeared to rely on this dictum from *Condon*. *See Edwards v. City of Goldsboro*, 178 F.3d 231, 252 (4th Cir. 1999) (citing *Condon*, 155 F.3d at 464). In *Edwards*, the plaintiff brought seventeen causes of action against a city and its officials,

claiming that they could not punish him for teaching a handgun safety class when he was not authorized to do so. *Id.* at 239–40. One of those causes of action invoked, without elaboration, his “right to privacy.” *Id.* at 240, 252. We rejected that claim because the case did not involve “matters of reproduction, contraception, abortion, and marriage.” *Id.* at 252. But this proposition conflicts with *Walls*’s holding that information within an individual’s reasonable expectations of privacy—including financial information—falls within the right to privacy. *Walls*, 895 F.2d at 192–94. So, under our rules of horizontal stare decisis, we are required “to follow the earlier of the conflicting opinions” rather than decide which precedent is correct. *McMellon*, 387 F.3d at 333.⁸

Because no subsequent panel could overrule *Walls* and the Supreme Court has done little to clarify the scope of the constitutional right to privacy, we follow *Walls*. We must thus ask (1) whether a “reasonable expectation of privacy” in the information exists as to entitle it to privacy protection and, if so, (2) whether “a compelling governmental interest in disclosure outweighs the individual’s privacy interest.” *Walls*, 895 F.2d at 192. We decide that Payne lacked a reasonable expectation of privacy in his HIV

⁸ In *Greenville Women’s Clinic v. Comm’r, S.C. Dep’t of Health and Env’t Control*, 317 F.3d 357 (4th Cir. 2002), we considered a South Carolina law that required abortion clinics to record certain information and report each abortion to the South Carolina Department of Health and Environmental Control. *Id.* at 367–71. We found that because South Carolina had an adequate governmental interest in instituting this reporting requirement and provided safeguards to prevent the disclosure of this information, the rights of the clinic’s patients were not violated. *Id.* Like *Whalen*, *Greenville Women’s Clinic* assumed that the privacy right at interest in that case existed.

medication and diagnosis. He thus lacked a right to privacy in that information and we need not consider part two of the *Walls* test.

C. As an inmate, Payne lacked a reasonable expectation of privacy in information about his HIV status

We first look to Payne’s claimed “reasonable expectation of privacy.” *Id.* at 193. Dr. Taslimi disclosed Payne’s HIV status while Payne was a patient in a prison medical center. And a prisoner’s reasonable expectations of privacy are limited.

In *Hudson v. Palmer*, the Supreme Court held that a prison inmate lacked a reasonable expectation of privacy in his prison cell. 468 U.S. 517, 525–26 (1984). The Court found that “any subjective expectation of privacy that a prisoner might have in his prison cell” was not one that society would recognize as legitimate or reasonable. *Id.* at 526–27. Balancing the prisoner’s interest in privacy against “the interest of society in the security of its penal institutions,” the Court held that any subjective desire for privacy was “incompatible” with the need to “ensure institutional security and internal order.” *Id.* at 527–28; *see also id.* (“[l]oss of freedom of choice and privacy are inherent incidents of confinement” (quoting *Bell v. Wolfish*, 441 U.S. 520, 537 (1979))).

Although *Hudson* discussed an inmate’s right to privacy based on the need for institutional safety, we have rejected the claim that the Government can only search a detainee’s cell where the search advances legitimate penological needs. In *United States v. Jeffus*, the plaintiff claimed that the government had searched his cell to obtain evidence against him and

thus the search “had ‘nothing whatever to do with security, safety, or sanitation’ at the jail.” 22 F.3d 554, 559 (4th Cir. 1994). We rejected his claim, reasoning that the government’s rationale for conducting the search did not matter for Fourth Amendment purposes because the detainee lacked any reasonable expectation of privacy in his cell. *Id.* In other words, if a detainee does not have a reasonable expectation of privacy, the reason the detainee lacks it and the reason for the government’s search need not be the same.

That is not to say that prisoners have no “reasonable expectations of privacy” in prison. But those expectations are quite limited. For example, we found a “reasonable expectation of privacy” in “bodily privacy and integrity” to be violated by surgery to remove a cosmetic implant from an inmate’s genitals. *King v. Rubenstein*, 825 F.3d 206, 214–15 (4th Cir. 2016); *but cf. Jones v. Murray*, 962 F.2d 302, 306 (4th Cir. 1992) (permitting drawing blood from a pretrial detainee because detainees “lose a right of privacy from routine searches of the cavities of their bodies and their jail cells”). That interest in “bodily integrity involve[d] the ‘most personal and deep-rooted expectations of privacy’” and many sexually invasive searches will involve an “objectively extreme” intrusion on those expectations of privacy. *King*, 825 F.3d at 215–16 (quoting *Winston v. Lee*, 470 U.S. 753, 760 (1985)).

As an inmate in a prison medical center, Payne lacked a reasonable expectation of privacy in his HIV status and his compliance with his treatment plan. Payne does not claim a reasonable expectation of privacy in the initial disclosure of his HIV diagnosis

and medical records to prison officials. *See Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989) (testing prison inmates for AIDS does not violate the Fourth Amendment); *see also Jones*, 962 F.2d at 307. Payne instead challenges the *secondary* disclosure from prison officials to prison guards and inmates in the medical ward. But just as he lacks a reasonable expectation of privacy in the initial disclosure of his communicable-disease diagnosis to the prison officials, so too does he lack a reasonable expectation of privacy in the secondary disclosure of his diagnosis. Where an inmate lacks a reasonable expectation of privacy, he lacks it for all purposes. *Jeffus*, 22 F.3d at 559. Whatever desire he may have to keep that information purely private is “incompatible” with the needs of an institution, and therefore not reasonable. *Hudson*, 468 U.S. at 527; *see Anderson v. Romero*, 72 F.3d 518, 524 (7th Cir. 1995) (Posner, J.) (Even if prisoners had a right to the confidentiality of their medical records in general, “it would not follow that a prisoner had a right to conceal his HIV status” because of the “great difference . . . between a communicable and a noncommunicable disease.”).

Information about an inmate’s HIV diagnosis and medication is unlike the expectations of privacy that we have found protected in prison. Unlike an inmate’s bodily integrity, one’s communicable-disease diagnosis lacks any deep roots in the expectation of privacy and falls far from the most personal invasions into an inmate’s body. *See King*, 825 F.3d at 215. Disclosure of Payne’s diagnosis and medication information simply does not implicate the same Fourth Amendment concerns as forcing someone to,

for example, undergo surgery or subject themselves to invasive medical procedures.⁹

The limits on an inmate's expectations of privacy are particularly strong where the information he seeks to protect relates to the institutional safety of the prison. *See Hudson*, 468 U.S. at 526. Here, both the location and the type of information reduces any possible expectation of privacy that Payne might have had in this information. First, Payne was told that he had not taken his medicine within the prison medical unit, the most relevant place for such information to be shared and where it might be difficult to ensure others would not hear. Second, the information Dr. Taslimi relayed to Payne dealt with his communicable disease and whether he was taking his medication, which is especially relevant in a prison where disease can spread rapidly (as seen by the COVID-19 pandemic). While HIV and its spread can be controlled by medicine, an inmate's expectation of privacy in his diagnosis is still unreasonable during treatment because there remains a risk of transmission to prison workers and other inmates. For example, a prisoner might forgo taking the medicine and thus become contagious again, just as Payne apparently did here. So it is hard to see how Payne would have a

⁹ Nor is Payne's communicable-disease status equivalent to an inmate's expectation of privacy in legal mail, which "is widely recognized to be privileged and confidential." *Haze v. Harrison*, 961 F.3d 654, 661 (4th Cir. 2020); *see also* Sarah A. Rana, *Restricting the Attorney-Client Privilege: Necessary Limitations or Distorting the Privilege?*, 32 SUFFOLK U. L. REV. 687, 689–93 (1999) (tracing the history of the attorney-client privilege to the common law and discussing its relationship to the Fifth Amendment).

reasonable expectation of privacy in his communicable-disease status within a medical unit.

In sum, Payne has a reduced expectation of privacy in prison and, as we conclude here, no reasonable expectation of privacy in his HIV diagnosis and treatment. No matter how much a prisoner subjectively would like to keep that information to himself, we must ask whether that expectation is “one that society is prepared to recognize as ‘reasonable.’” *Katz*, 389 U.S. at 361 (Harlan, J., concurring); *accord Hudson*, 468 U.S. at 525–26. And any subjective expectation of privacy in this information that Payne has is simply not reasonable. *See Anderson*, 72 F.3d at 522–23; *Tokar v. Armontrout*, 97 F.3d 1078, 1084 (8th Cir. 1996).¹⁰ Because we decide that this information is not “within [Payne’s] reasonable expectations of confidentiality,” we need not go further to address whether Dr. Taslimi had a “compelling government interest in disclos[ing Payne’s HIV status that] outweigh[ed Payne’s] privacy interest.” *Walls*, 895 F.2d at 192.

D. HIPAA does not create a private cause of action

Finally, Payne alleged that Dr. Taslimi violated HIPAA. HIPAA provides that “[a] person who knowingly . . . discloses individually identifiable health information to another person” without authorization shall be fined, imprisoned, or both. 42

¹⁰ The circuits that have found a right to privacy in this context have done so by finding that privacy right to be “completely different” than the rights “extinguished” by *Hudson*’s reasonable-expectation-of-privacy test. *Doe v. Delie*, 257 F.3d 309, 316–17 (3d Cir. 2001); *accord Powell v. Schriver*, 175 F.3d 107, 112 n.3 (2d Cir. 1999). Whatever the merits of that position, we are constrained to apply our holding in *Walls* to the contrary.

U.S.C. § 1320d-6(a)(3), (b). Even if Dr. Taslimi violated this provision, a plaintiff seeking a remedy under § 1983 “must assert the violation of a federal *right*, not merely a violation of federal *law*.” *Planned Parenthood S. Atl. v. Baker*, 941 F.3d 687, 696 (4th Cir. 2019) (quoting *Blessing v. Freestone*, 520 U.S. 329, 340 (1997)). Thus, for Payne to recover under HIPAA, the statute must create a private *right* to sue that may be enforced under § 1983. Every circuit court to consider whether HIPAA created a private *right* to sue has found that it does not. *See Meadows v. United Servs., Inc.*, 963 F.3d 240, 244 (2d Cir. 2020); *Stewart v. Parkview Hosp.*, 940 F.3d 1013, 1015 (7th Cir. 2019); *Dodd v. Jones*, 623 F.3d 563, 569 (8th Cir. 2010); *Wilkerson v. Shinseki*, 606 F.3d 1256, 1267 n.4 (10th Cir. 2010); *United States v. Streich*, 560 F.3d 926, 935 (9th Cir. 2009); *Acara v. Banks*, 470 F.3d 569, 571–72 (5th Cir. 2006); *see also Faber v. Ciox Health, LLC*, 944 F.3d 593, 596–97 (6th Cir. 2019) (stating, in dictum, that HIPAA does not create a private right of action). This is because HIPAA does not expressly allow for a private cause of action but delegates enforcement authority to the Secretary of the Department of Health and Human Services, reflecting Congress’s intent to forgo creating a private remedy. *Meadows*, 963 F.3d at 244; *see also Alexander v. Sandoval*, 532 U.S. 275, 290 (2001) (disfavoring implied causes of action when Congress has provided other methods of enforcing the statute’s mandate). We see no reason to chart a different course from our sister circuits. Payne has no private right of action under HIPAA.

* * *

We limit our decision today to the question before us: Did Payne have a “reasonable expectation to privacy” in his HIV status while in a prison medical unit? We hold that he did not. When Dr. Taslimi disclosed his HIV status, Payne was in prison, a place where individuals have a curtailed expectation of privacy. Whatever expectations remain fail to include the diagnosis of or medication for HIV, a communicable disease. The judgment below is therefore

AFFIRMED.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Case No. 1:18cv587

Judge Liam O’Grady

[Filed July 16, 2018]

Christopher N. Payne,)
)
 Plaintiff,)
)
 v.)
)
 Jahal Taslimi, et al.,)
)
 Defendants.)

ORDER

Christopher N. Payne, a Virginia inmate proceeding pro se has filed a civil rights action, pursuant to 42 U.S.C. § 1983. By Order dated June 14, 2018, this civil matter was dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915A(b).¹ Dkt.

¹ Section 1915 A provides:

No. 4. Plaintiff has now filed a complaint that is exactly the same as his original complaint, except that plaintiff alleges that the Fourteenth Amendment “right to privacy extends to strong to [sic] HIV status right's [sic] and strong restrictions on releasing HIV status info without consent to non medical personel [sic].” Construed liberally, this pleading will be taken as a Motion for Reconsideration.

Relief under Rule 59(e) is available only “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Relief under Rule 60(b) is available for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud..., misrepresentation, or misconduct by an opposing party;
- (4) the judgment is

(a) **Screening.**—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for dismissal.**—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief can be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed R. Civ. P. 60(b). Plaintiff's Fourteenth Amendment claim was dismissed because neither the United States Supreme Court nor the United States Court of Appeals for the Fourth Circuit has recognized a constitutional right to privacy with regards to medical records. Sherman v. Jones, 258 F. Supp. 2d 440, 442 (E.D. Va. 2003); Wilson v. S. Health Partners Nursing Staff, No. 1:18-CV-00013-FDW, 2018 WL 1972716, at *3 (W.D.N.C. Apr. 26, 2018) (collecting cases). Plaintiff has not submitted any new evidence or asserted any new arguments, therefore, his motion will be denied.

Accordingly, it is hereby

ORDERED that plaintiff's Motion for Reconsideration [Dkt. No. 7] be and is DENIED.

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Case No. 1:18cv587

Judge Liam O’Grady

[Filed June 14, 2018]

Christopher N. Payne,)
)
 Plaintiff,)
)
 v.)
)
 Jahal Taslimi, et al.,)
)
 Defendants.)

ORDER

Christopher N. Payne, a Virginia inmate proceeding pro se, has filed a civil rights action, pursuant to 42 U.S.C. § 1983. After reviewing plaintiff’s complaint, the claims against defendant will be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915A(b).¹

¹ Section 1915 A provides:

Plaintiff alleges that, on January 16, 2018, while he was incarcerated at Deep Meadows Correctional Center, Doctor Taslimi disclosed plaintiff's HIV status in front of other staff and inmates. Dkt. No. 1. Plaintiff claims this was done in violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Virginia law, Virginia Department of Corrections Operating Policies ("VDOC OP"), and the United States Constitution. Id. Plaintiff seeks monetary and injunctive relief. Id.

Pursuant to § 1915A, a court must dismiss a prisoner complaint that "is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(b)(1). Whether a complaint states a claim upon which relief may be granted is determined by "the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." Sumner v. Tucker, 9 F. Supp. 2d 641, 642 (E.D. Va. 1998). The alleged facts are presumed true, and the complaint should be dismissed only when "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations."

(a) **Screening.**—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for dismissal.**—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief can be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). To survive a 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

Plaintiff has failed to state a claim upon which relief can be granted because he has not stated a cognizable § 1983 claim. First, courts which have addressed the issue agree uniformly that HIPAA provides no private right of action. See Acara v. Banks, 470 F.3d 569, 571-72 (5th Cir. 2006) (collecting cases). Second, to state a cause of action under § 1983, a plaintiff must allege facts indicating he or she was deprived of rights guaranteed by the Constitution or laws of the United States. See West v. Atkins, 487 U.S. 42 (1988). Therefore, alleged violations of state law or the VDOC OP are not cognizable § 1983 claims. Finally, plaintiff's constitutional claims will be liberally construed as claims for violation of his privacy. However, neither the United States Supreme Court nor the United States Court of Appeals for the Fourth Circuit has recognized a constitutional right to privacy with regards to medical records. Sherman v. Jones, 258 F. Supp. 2d 440,442 (E.D. Va. 2003); Wilson v. S. Health Partners Nursing Staff, No. 1:18-CV-00013-FDW, 2018 WL 1972716, at *3 (W.D.N.C. Apr. 26, 2018) (collecting cases).

Accordingly, it is hereby

ORDERED that this action be and is DISMISSED, WITH PREJUDICE, for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b)(1); and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(g),² this dismissal may affect plaintiff's ability to proceed in forma pauperis in future civil actions; and it is further

ORDERED that the Clerk record this dismissal for purposes of the Prison Litigation Reform Act.

² 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Case No. 1:18cv587

[Filed May 17, 2018]

Christopher N. Payne,)
)
 Plaintiff,)
)
 v.)
)
 Jahal Taslimi, et al.,)
)
 Defendants.)

COMPLAINT

I. Parties

A. Plaintiff:

Christopher N. Payne
Inmate Number 1381249
(S2SP) 24427 Musselwhite Dr.
Waverly, VA 23831

B. Defendant(s):

Jahal Taslimi
Medical Doctor at Armor Health Serv.
3500 Woods Way Ln.
Statefarm, VA 23160

Ms. Smith
LPN HAS Armor Health Serv.
3500 Woods Way Ln.
Statefarm, VA 23160

II. Previous Lawsuits

A. Have you ever begun other lawsuits in any state or federal court relating to your imprisonment?

Yes No

III. Grievance Procedure

A. At what institution did the events concerning your current complaint take place?

Deep Med Corr Center Medical Unit (DMCC)

B. Does the institution listed in A. have a grievance procedure?

Yes No

C. If your answer to B. is YES:

1. Did you file a grievance based on this complaint? Yes No

2. If so, where and when:

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1-16-18 informal filed Answered on 1-29-18 by
HSA Smith or. Grievance filed on 1-30-18

3. *What was the result?*

Your Complaint has been Addressed

4. *Did you appeal?* Yes No

5. *Result of appeal:*

None "No Answer" Sent 1-30-18

IV. Statement of the Claim

On 1-16-18 at 10:15am medical doctor J. Taslimi & C/O Quill came to my Bed #26 in a open dorm with other staff, offender's, civilian's within 5 feet away and disclosed "You did not take your HIV meds today" to where other's stopped talking and looked plus C/O Quill.

HIPPA Violation Complaint filed 1-18-18 VA
DHP.

1) Statement from Witness C/O Quill (Attached)

2) Policy 720.1 pg 2 #6

(Violation of Const right an COV "Code of Va")

V. Relief

I understand that in a section 1983 action the court cannot change my sentence, release me from custody or restore good time. I understand I should file a petition for writ of habeas corpus if I desire this type of relief. CP [please initial]

The plaintiff wants the court to:

award money damages in the amount of
\$95,000.00

grant injunctive relief by **Correctional
officer Quill compel to make a sworn aff.
Ref to Case.**

Other **Suspend M.D. Lic to practice. Plus
legal fee's & Court Cost 100%**

VI. Places of Incarceration

CWCC, DMCC, DWCC, PMU, SX2

VII. Consent

DO YOU CONSENT TO PROCEED BEFORE A U.S.
MAGISTRATE: Yes No

VIII. Signature

Signed this 4 day of **May, 2018**

/s/ Christopher N. Payne

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Case No. 1:18cv587

[Filed June 21, 2018]

Christopher N. Payne,)
)
 Plaintiff,)
)
 v.)
)
 Jahal Taslimi, et al.,)
)
 Defendants.)

AMENDED COMPLAINT

I. Parties

A. Plaintiff:

Christopher N. Payne
Inmate Number 1381249
(S2SP) 24427 Musselwhite Dr.
Waverly, VA 23831

B. Defendant(s):

Jahal Taslimi
Medical Doctor at Armor Health Serv.
3500 Woods Way Ln.
Statefarm, VA 23160

Ms. Smith
LPN HAS Armor Health Serv.
3500 Woods Way Ln.
Statefarm, VA 23160

II. Previous Lawsuits

A. Have you ever begun other lawsuits in any state or federal court relating to your imprisonment?

Yes No

III. Grievance Procedure

A. At what institution did the events concerning your current complaint take place?

Deep Med Corr Center Medical Unit (DMCC)

B. Does the institution listed in A. have a grievance procedure?

Yes No

C. If your answer to B. is YES:

1. Did you file a grievance based on this complaint? Yes No

2. If so, where and when:

1-16-18 informal filed Answered on 1-29-18 by
HSA Smith or. Grievance filed on 1-30-18

All attached

3. *What was the result?*

Your Complaint has been Addressed

4. *Did you appeal?* Yes No

5. *Result of appeal:*

None "No Answer" Sent 1-30-18

IV. Statement of the Claim

On 1-16-18 at 10:15am medical doctor J. Taslimi & C/O Quill came to my Bed #26 in a open dorm with other staff, offender's, civilian's within 5 feet away and disclosed "You did not take your HIV meds today" to where other's stopped talking and looked plus C/O Quill.

HIPPA Violation Complaint filed 1-18-18 VA
DHP.

1) Statement from Witness C/O Quill (Attached)

2) Policy 720.1 pg 2 #6

(Violation of Const right an COV "Code of Va")

Fourteenth right to privacy extend's to strong to HIV status right's and strong restrictions on releasing HIV status info without consent to non medical personel.

V. Relief

I understand that in a section 1983 action the court cannot change my sentence, release me from custody or restore good time. I understand I should file a petition for writ of habeas corpus if I desire this type of relief. **CP** [please initial]

The plaintiff wants the court to:

award money damages in the amount of **\$95,000.00**

grant injunctive relief by **Correctional officer Quill compel to make a sworn aff. Ref to Case.**

Other **Suspend M.D. Lic to practice. Plus legal fee's & Court Cost 100%**

VI. Places of Incarceration

CWCC, DMCC, DWCC, PMU, SX2

VII. Consent

DO YOU CONSENT TO PROCEED BEFORE A U.S. MAGISTRATE: Yes No

VIII. Signature

Signed this 4 day of **May, 2018**

/s/ Christopher N. Payne

APPENDIX F

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Case No. 1:18cv587

[Filed August 14, 2018]

Christopher N. Payne,)
)
 Plaintiff,)
)
 v.)
)
 Jahal Taslimi, et al.,)
)
 Defendants.)

NOTICE OF APPEAL

Jahal Taslimi under the color of state Va on 5.18.18 violated (HIPAA) right is based on the Due Process of the Fourteenth or Fifth amendment see Doc v. Delie 257 F.3d 309, 316 (3d Cir. 2001) Also Va Code 8.01-671 date 1991 Revised.

Deliberate indifference knowing Payne's Medical Condition an HIPPA law's An Released Medical information "outloud" when Board Medicine clearly state's at No Point will HIV info be released to non-medical professional's. Under Eighth Amendment.

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On 19 day of July, 2018

/s/ Christopher N. Payne